



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable D. W. Burkhalter
County Attorney, Throckmorton County
Throckmorton, Texas

Dear Sir:

Opinion No. O-6181
Re: Unlawful transportation
of intoxicating liquor in
dry area; necessity that
complaint, information or
indictment allege trans-
portation for purpose of
sale; requirements as to
charge of court; owner-
ship of liquor.

We are in receipt of your request for our opinion,
in which you submit three questions involving interpretation
of the Texas Liquor Control Act. Your questions are restated
as follows:

"1. Is it necessary to charge in the com-
plaint, information or indictment in a prosecution
for unlawful transportation of intoxicating liquor
in a dry area that the liquor was transported for
the purpose of sale?

"2. In such a case should the judge instruct
the jury that the transportation must be for the
purpose of sale to be unlawful?

"3. In a prosecution for unlawful transpor-
tation of intoxicating liquor in a dry area, is the
ownership of the liquor material? In other words,
does it make any difference whether or not one owns
any interest in the liquor being transported by him,
as regards criminal liability?

The prohibitory provisions of the statute relevant
to your problems are contained in Section 4 (b) of the Texas
Liquor Control Act (Vernon's Annotated Penal Code, Art. 666-4
(b):

" It shall be unlawful for any person in any dry area to manufacture, distill, brew, sell, possess for the purpose of sale, import into this State, export from the State, transport, distribute, warehouse, store, solicit or take orders for, or for the purpose of sale to bottle, rectify, blend, treat, fortify, mix, or process any liquor, distilled spirits, whiskey, gin, brandy, wine, rum, beer or ale."

We have carefully examined the entire statute, including the various exceptions available as defenses to the quoted section, and we fail to find any provision whatever to require either allegation, proof or instruction by the Court that transportation of prohibited liquor must be for the purpose of sale in order to sustain a conviction for such transportation in a dry area. In our opinion the holding of the Court of Criminal Appeals in the case of Crowley v. State, 92 Tex. Cr. R. 103, 242 S. W. 472, followed in a long line of decisions by that court, is controlling. While it is true that the Court had under consideration in the Crowley case the state-wide prohibition act as it existed when the opinion was rendered, the language employed by the Legislature is substantially the same in the present statute as it relates to dry areas within the state. See also Stringer v. State, 92 Tex. Cr. R. 46, 241 S. W. 159; Forester v. State, 94 Tex. Cr. R. 295, 250 S. W. 1027.

You are therefore respectfully advised that the answers to each of the first two questions propounded by you are in the negative.

In answer to your third question, your attention is invited to Section 23a, Subdivision 1 of the statute (Vernon's Annotated Penal Code, Art. 666-23a, Subdivision 1);

"It is provided that any person who purchases alcoholic beverages for his own consumption may transport same from a place where the sale thereof is legal to a place where the possession thereof is legal."

This section affords a defense to be timely interposed by the accused applicable under the facts of the case,

and it is not necessary to be negatived in the state's pleading. Absent evidence raising the issue, it is, of course, improper to include it in the Court's charge.

Violations of the Texas Liquor Control Act constitute misdemeanors. Section 41 of the act provides the penalty for illegal transportation of liquor condemned by Section 4 (b), or Article 666-4 (b) supra. (Vernon's Penal Code, Art. 666-41.)

In misdemeanor cases it is well settled that all parties participating in an offense are principal offenders and may be prosecuted and punished as such. Therefore, the mere fact that liquor being transported does not belong to the person transporting it cannot legally affect his guilt or innocence or enable him to escape the penal consequences for such transportation.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Benjamin Woodall*
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